

# Notice of Allowability

## Application No.

09/822,672

## Examiner

Larry R. Helms

## Applicant(s)

HANNA, NABIL

## Art Unit

1642

### -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed 9/13/04.
2. ☒ The allowed claim(s) is/are 74-102.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 6/1/04, 10/8/03, 12/24/03
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

LARRY R. HELMS, PH.D  
PRIMARY EXAMINER

**EXAMINER'S AMENDMENT/COMMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Mr. Cawley on 12/13/04.

The application has been amended as follows:

Claims 1-73 have been canceled.

In claim 81 the phrase "RUTXAN® (rituximab)" was deleted and the phrase "rituximab (ATCC No. HB-69119)" was added.

In claim 82 the phrase "RUTXAN® (rituximab)" was deleted and the phrase "rituximab (ATCC No. HB-69119)" was added.

In claim 84 the phrase "RUTXAN® (rituximab)" was deleted and the phrase "rituximab (ATCC No. HB-69119)" was added.

In claim 90 the phrase "RUTXAN® (rituximab)" was deleted and the phrase "rituximab (ATCC No. HB-69119)" was added.

### REASONS FOR ALLOWANCE

2. The following is an examiner's statement of reasons for allowance: The claims recite a method of treating B cell lymphoma with an anti-IL-10 antibody and as stated in the response filed 9/13/04, the art is unclear whether IL10 or an antagonist of IL10 could be useful for cancer therapy and this is demonstrated by the teachings of Goldenberg and Bruserud which teach administration of IL10 for the treatment of cancer. Therefore, because of this uncertainty there would be no reasonable expectation of success that an anti-IL10 antibody would be useful for treatment of cancer.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

3. With the allowance of the species CD20, all species are allowed and as such the species election is withdrawn.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Larry R. Helms, Ph.D, whose telephone number is (571) 272-0832.

LARRY R. HELMS, PH.D  
PRIMARY EXAMINER

